IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1395 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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PRAKASHKUMAR KESHAVLAL THAKKAR - Appellant(s)
Versus
JAKESH BHARATKUMAR SHAH & 4 - Defendant(s)

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Appearance :
MR MC BHATT for Appellant(s) : 1,MR AJ DESAI for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 4.
MR SHALIN N MEHTA for Defendant(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 11/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 01.05.92 passed by the Motor Accident Claims Tribunal(Main) Ahmedabad in MACP No. 278 of 1983 whereby the Tribunal awarded an amount of Rs. 30,000/- by way of compensation out of which Rs. 15000/- was ordered to be paid by original opponent no.1 and the remaining amount by original opponent nos. 2, 4 & 5 jointly and severally.

2. The original claimant had filed claim petition

seeking compensation to the tune of Rs. 50,000/- in respect of the vehicular accident which took place on 16.06.83 between an auto-rickshaw bearing no. GRT 1112 and motor cycle bearing no. GAC 4440. The original applicant was pillion riding on the motor cycle which was driven by original opponent no.2. As a result of the said accident, the original claimant sustained serious bodily injuries and filed the claim petition. The Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellant has contended that the Tribunal has misread and misconstrued evidence on record thereby apportioning the liability between the parties. He has further contended that the Tribunal ought to have held that the question of negligence is rejudicata in MACP No. 176 of 1983 filed by one Shri Navinbhai Maneklal Shah, passenger in the auto-rickshaw.

4. Heard learned counsel for the parties. I have gone through the award of the Tribunal and other documents placed on record. The appellant has strongly relied on the MACP No. 176/1983 while arguing the question of contributory negligence. Para 15 of the said judgement reads as under:

The learned advocate for the petitioner submitted that the motor cyclist did not remain present at the time of the panchnama. He has not stepped the witness-box that opponent no.2 was driving the rickshaw slowly on the left side of the road, but opponent no.1 came driving the motor cycle with more speed on the cross-roads unmindfully of the fact that the other vehicles might be passing through the cross-road and dashed against the auto-rickshaw. He submitted that opponent no.2 has tried his best to avoid the accident by applying the brakes but the motor cyclist came from the left side and dashed on the front left side of the auto-rickshaw, which has resulted in the accident. He also submitted that merely because the motor cycle was insured this is not a case to involve the motor cyclist. The learned advocate appearing for opponent no.1 and the Insurance Company submitted that there was 75 per cent contributory negligence on the part of the auto-rickshaw driver. No explanation is given by the motor cyclist,- why he has not come to give deposition. Moreover, whether by the impact of the motor cycle, the auto-rickshaw was over-turned or not, is a question which depends on the speed of the motor cycle and the spot, where the motorcycle dashed. In the instant case, the petitioner had deposed that the motor cyclist came with speed from the left side road and dashed against the front left side of the rickshaw and due to that impact, the auto-rickshaw turned turtled. I believe him and hold that it was due to the negligence of opponent no.1 alone, that the accident occurred and the petitioner sustained bodily injuries. I do not accept the submission of the learned advocate for opponent no.1 and the insurance company, that the accident occurred due to the sole negligence of opponent no.2 or due to the composite negligence of opponents no.1 & 2 or that there was contributory negligence to a large number on the part of opponent no.2. I decide issue no.1 accordingly. Issue no.2, in the view of my findings on these issues, it is not necessary to decide issue no. 3-A.

4.1 From the above, it is quite clear that because of the non appearance of the motor cyclist and as a result of his not entering into the witness box, the Tribunal has drawn an adverse conclusion against the motor cyclist whereas in the present case the Tribunal has considered the evidence borne out from the record more particularly, Ex. 85 being the panchnama of the scene of the accident and the deposition of the applicant. In my view, the evidence which has been considered by the Tribunal is just and proper and therefore no interference is called for in the matter.

5. In the premises aforesaid, appeal is dismissed. No order as to costs.

6. In view of the order in First Appeal, the Cross-objection St. 15098 of 1992 is allowed. The amount deposited by the insurance company shall be refunded. If the amount has already been withdrawn by the original claimants, the same shall not be recovered but it will be open to the insurance company to recover the amount from the owner. However, if the amount has not been withdrawn by the original claimants, it will be open to the claimants to recover the same from the owner of the

vehicle in question. No order as to costs.

(K.S. JHAVERI, J.)

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